

February 7, 2019

VIA Electronic Delivery

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

Re: Notice of Ex Parte Presentation, CG Docket Numbers 02-278 and 17-59

Dear Ms. Dortch:

On February 5, 2019, staff and members of the National Council of Higher Education Resources (NCHER) met with Zenji Nakazawa, Legal Advisor, Public Safety and Protection, within the Office of Chairman Ajit Pai.

NCHER is a national, nonprofit trade association that represents higher education service agencies that administer education programs that make grant and loan assistance available to students and parents to pay for the costs of postsecondary education. Our membership includes organizations under contract with the U.S. Department of Education to service and recover outstanding loans made under the Federal Direct Loan Program and organizations that service and recover outstanding loans made under the Federal Family Education Loan Program (FFELP). The NCHER members at the meeting are all involved in the collection of federal student loans.

Those in attendance at the meeting were:

- Shelly Repp, Senior Advisor and Counsel, NCHER
- Tim Fitzgibbon, NCHER Consultant
- Lynn Reynolds, Account Control Technology
- Chance Hoskinson, CBE Companies
- Fred Lundquist, ConServe
- Ken Kuzdzal, Reliant Capital Solutions
- John Moody, Reliant Capital Solutions

Generally, at the meeting the group related the restrictions imposed by case decisions and Federal Communications Commission rules on calling student loan borrowers on their mobile devices. The following is a summary of the major points made during the meeting:

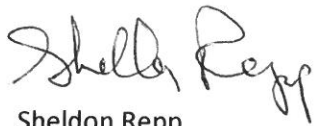
- We referred to the tools servicers and collectors of federal student loans have to help struggling borrowers. These tools, which are unique in the consumer credit space, were made available by

the Congress and the U.S. Department of Education specifically to help struggling borrowers. Servicers and collectors serve as counselors in helping struggling borrowers understand and qualify for these complicated programs. We pointed out that all calls are informational, and do not involve telemarketing.

- The importance of having a phone conversation with borrowers was emphasized. The group mentioned that student loan debtors don't read letters sent to them.
- Also, it takes a number of call attempts to get that live telephone contact. One attendee mentioned that in recent period, his firm made 1.2 million calls but only connected with borrowers 40 thousand times (3.3 percent of call attempts), and some of those contacts were in-bound calls from borrowers.
- We pointed out how the Commission's Declaratory Ruling and Order released on July 10, 2015 (the "Ruling") restricts the ability of student loan servicers and collectors to have live conversations with student loan borrowers.
- We also mentioned that Section 301 of the Bipartisan Budget Act of 2015 ("BBA") was intended by the Congress to provide relief from the Ruling's restriction in the context of collecting debt owed to or guaranteed by the federal government. However, the Commission's Order implementing the BBA provision, which imposes a three-call-attempt-per-thirty-day period limit in the collection of federal debt, is so restrictive as to completely thwart the intent of Congress. Further, we stated that the one-call-attempt limit on calls to reassigned numbers where the caller has no knowledge that the number has been reassigned is so restrictive that it has caused many participants to refrain from any calling, for fear of being sued.
- We pointed out that we welcomed the DC Circuit's decision in *ACA International v. FCC*, which overturned parts of the Ruling. However, the Ninth Circuit's decision in *Marks v. Crunch San Diego* takes an opposing position, one that we believe is inconsistent with the TCPA and its legislative intent.
- We mentioned that the National Consumer Law Center, in an Ex Parte letter dated June 6, 2015 [sic] and posted on the Commission's Electronic Comment Filing System on June 12, 2014, recommended that: "The FCC should limit collection calls to three calls per week, voicemail messages to one per week, and call-backs to once per week unless the consumer gives specific consent at the time of the call." This recommendation by a leading consumer advocacy group is significantly more permissive than the Ruling or the Commission's Order implementing the BBA provision.
- We expressed support for the Commission's rules adopted December 12, 2018 establishing a comprehensive reassigned number database. We pointed out that struggling student loan borrowers commonly do not have enough money to pay their mobile phone bills. Either voluntarily or involuntarily, the numbers are canceled and then reassigned, generally without the knowledge of the servicer or collector. Our members are subject to costly litigation when calling those numbers. We encouraged swift implementation of the database.

In summary, we emphasized that regulatory relief and certainty are desperately needed. If you have any questions, please feel free to contact me at srepp@ncher.us or (202)822-2106.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheldon Repp". The signature is fluid and cursive, with the first name "Sheldon" written in a larger, more prominent script than the last name "Repp".

Sheldon Repp
Special Advisor and Counsel

Cc: Zenji Nakazawa